

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THAN ORN, individually, THALISA ORN,
individually, J.O. and C.O., by their
Guardian, CLARISSE ORN,

Plaintiffs,

vs.

CITY OF TACOMA, a municipal
corporation; and KRISTOPHER CLARK, in
his individual capacity,

Defendants.

CASE NO. 3:13-cv-05974-MJP

PLAINTIFFS' MOTION TO AMEND
CASE CAPTION

**NOTE ON MOTION CALENDAR:
MONDAY, NOVEMBER 23, 2020**

PLAINTIFFS' MOTION TO AMEND CASE
CAPTION

Page i | CASE NO. 3:13-cv-05974-MJP

**PFAU COCHRAN
VERTETIS AMALA**
ATTORNEYS AT LAW

909 A Street, Suite 700
Tacoma, WA 98402
(253) 777-0799 | Fax: (253) 627-0654

I. RELIEF REQUESTED

COMES NOW, Plaintiffs, by and through their undersigned attorneys, and requests that the Court amend the case caption as follows:

SALVADOR MUNGIA, as Litigation
Guardian *ad Litem* for THAN ORN,
individually; THALISA ORN,
individually; and CLARISSE ORN, as the
legal guardian of J.O. and C.O., minors,

Plaintiffs,

vs.

CITY OF TACOMA, a municipal
corporation; and KRISTOPHER CLARK,
in his individual capacity,

Defendants.

As provided above, Plaintiffs seek to amend the caption of this action to reflect that (1) Salvador Mungia is the appointed Litigation Guardian *ad Litem* for Plaintiff Than Orn and (2) clarify that Clarisse Orn is the legal guardian of minor Plaintiffs J.O. and C.O. The amendment to the case caption is in line with the Court's order granting Plaintiffs' Motion to Appoint Litigation Guardian *ad Litem* filed October 22, 2020 and will help clarify the identity of the Plaintiffs to the jury, particularly the relationship that Salvador Mungia and Clarisse Orn have with the Plaintiffs. Additionally, Defendants have issued a trial subpoena for Mr. Mungia to testify at trial and Plaintiffs have included Mr. Mungia as a witness who will testify as to his role in this case. The case caption amendment will further assist the jury in understanding Mr. Mungia's role in this case as it relates to Plaintiff Than Orn.

PLAINTIFFS' MOTION TO AMEND CASE
CAPTION

Page 1 | CASE NO. 3:13-cv-05974-MJP

**PFAU COCHRAN
VERTETIS AMALA**
ATTORNEYS AT LAW

909 A Street, Suite 700
Tacoma, WA 98402
(253) 777-0799 | Fax: (253) 627-0654

II. STATEMENT OF FACTS

On October 5, 2020, Plaintiffs filed a motion to appoint Salvador Mungia to serve as Plaintiff Than Orn's Litigation Guardian *ad Litem*. Dkt. 161. On October 19, 2020, Defendants filed a response, agreeing to the motion. Dkt. 174. On October 22, 2020, the Court filed an order granted Plaintiffs' motion, which stated, "Than Orn requires protection and assistance to express his interests during times of incapacity and inability due to his medical condition," and thereby appointed Mr. Mungia to serve as Plaintiff Than Orn's Litigation Guardian *ad Litem*. Dkt. 176.

On November 17, 2020, Defendants served trial subpoenas on Plaintiffs, including a subpoena for Mr. Mungia to testify at trial. Cochran Dec. ¶ 2, Ex. 1. Plaintiffs accordingly listed Mr. Mungia in Plaintiffs' list of witnesses who Plaintiffs will call in their case-in-chief. Dkt. 204, Pg. 16. Despite themselves issuing a subpoena for Mr. Mungia to testify at trial, Defendants object to Mr. Mungia testifying at trial, stating that his testimony "would be improper and highly prejudicial, confuse the jury and invoke speculation by the jurors, especially given plaintiffs' denial that Mr. Orn is incompetent and will available [sic] to provide his own testimony." *Id.*

III. EVIDENCE RELIED UPON

This motion relies upon the existing file on record and the Declaration of Darrell L. Cochran and the exhibits attached thereto.

IV. AUTHORITY AND ARGUMENT

Pursuant to Fed R. Civ. P. 15(a)(2) and Local Court Rule 15, Plaintiffs in this matter respectfully request that the Court amend the caption of this action to reflect that (1) Salvador Mungia is the appointed Litigation Guardian *ad Litem* (hereinafter "LGAL") for Plaintiff Than

1 Orn and (2) clarify that Clarisse Orn is the legal guardian of minor Plaintiffs J.O. and C.O. The
2 amendment to the case caption will help the jury understand the relationship that Salvador
3 Mungia and Clarisse Orn have with the Plaintiffs.

4 Additionally, Mr. Mungia is expected to testify at trial. The jury will be assisted by the
5 case caption amendment as it will help the jury understand Mr. Mungia's role as it relates to
6 Plaintiff Than Orn. While Defendants noted an objection in the Pretrial Order regarding Mr.
7 Mungia being listed as a witness that Plaintiffs will call in their case-in-chief, any such objection
8 is mooted by Defendants themselves issuing a trial subpoena for Mr. Mungia to testify at trial.
9 Notably, Defendants issued their trial subpoena prior to Plaintiffs listing Mr. Mungia as a trial
10 witness.
11

12 Moreover, it is important for the jury to understand Mr. Mungia's role in seeking Mr.
13 Orn's best interests given his condition, particularly where Defendants have made it abundantly
14 clear that they intend to vigorously argue to the jury that Mr. Orn failed to mitigate his damages
15 by failing to follow the recommendations of his treating providers. Plaintiffs fully expect that
16 the Defendants will try to impress upon the jury that a recovery for future medical expenses
17 should not be awarded in light of Mr. Orn not following medical recommendations by treating
18 providers in the past. Plaintiffs must be able to respond to this highly prejudicial implication
19 which Defendants will hope to impart upon the jury by calling Mr. Mungia and having him
20 testify as to his role in seeking and protecting the best interests of Mr. Orn.
21

22 Lastly, Plaintiffs will prepare updated pretrial pleadings based on the amended case
23 caption and will have these documents ready for use before a jury is empaneled. This will
24 include an updated neutral statement which would specify the roles of Salvador Mungia and
25 Clarise Orn, as well as updated jury instructions where such updates are appropriate.
26

PLAINTIFFS' MOTION TO AMEND CASE
CAPTION

Page 3 | CASE NO. 3:13-cv-05974-MJP

**PFAU COCHRAN
VERTETIS AMALA**
ATTORNEYS AT LAW

909 A Street, Suite 700
Tacoma, WA 98402
(253) 777-0799 | Fax: (253) 627-0654

V. **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully ask the Court to amend the case caption in this matter.

DATED this 20th day of November, 2020.

PFAU COCHRAN VERTETIS AMALA, PLLC

By /s/ Darrell L. Cochran

Darrell L. Cochran, WSBA No. 22851

Thomas B. Vertetis, WSBA No. 29805

Andrew S. Ulmer, WSBA No. 51227

Alexander G. Dietz, WSBA No. 54842

Attorneys for Plaintiffs

COCHRAN DOUGLAS, PLLC

By /s/ Loren A. Cochran

Loren A. Cochran, WSBA No. 32773

Attorney for Plaintiffs

LAW OFFICE OF THOMAS A. BALERUD

By /s/ Thomas A. Balerud

Thomas A. Balerud, WSBA No. 19539

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, **Andrew S. Ulmer**, hereby declare under penalty of perjury under the laws of the United States of America that I am employed at Pfau Cochran Vertetis Amala PLLC and that on today's date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Anne M. Bremner
Karen L. Cobb
Frey Buck, P.S.
1200 Fifth Ave, Suite 1900
Seattle, WA 98101
abremner@freybuck.com
kcobb@freybuck.com

DATED this 20th day of November, 2020.

/s/ Andrew S. Ulmer
Andrew S. Ulmer
Associate Attorney